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June 10, 1999

Magalie Roman Salas
Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Re: Second Further Notice of Proposed Rulemaking Concerning Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, CC Docket No. 96-98.

Dear Ms. Salas:

Enclosed for filing in the above-referenced proceeding are an original and twelve copies of the Reply Comments of Allegiance Telecom, Inc.

Would you kindly date-stamp the additional copy provided and return the same to the bearer. Thank you for your assistance.

Sincerely,

Ruth Milkman

Ruth Milkman

Enclosures

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Implementation of the Local Competition Provisions in the Telecommunications Act of 1996	)	CC Docket No. 96-98
	)	
	)	
Interconnection between Local Exchange Carriers and Commercial Mobile Radio Service Providers	)	CC Docket No. 95-185

REPLY COMMENTS OF ALLEGIANCE TELECOM, INC.

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SUMMARY

The comments of Allegiance and other parties demonstrate that access to unbundled network elements, including loops, interoffice transport, operations support systems (OSS), signaling, and operator services and directory assistance, is necessary for competition to grow and flourish. The incumbent Local Exchange Carriers (LECs) seek to use this proceeding to change fundamentally the direction of the competition policy adopted by Congress in the 1996 Act and implemented by the Commission in its orders in this docket. Granting the incumbent LECs' broad request to limit access to unbundled network elements would effectively halt the progress that competitive LECs have made toward introducing competition in local markets. That result is neither mandated nor implied by the Court's decision, and would plainly violate the procompetitive intent of the Act.

The incumbent LECs seek to limit the access of competitive LECs to unbundled network elements by: (1) opposing nationwide unbundling requirements; (2) seeking to interpret the term "necessary" in a way that would significantly reduce the usefulness of proprietary elements to requesting carriers; and (3) advocating the denial of access to an unbundled network element even where there is no competitive wholesale market for the element. The Commission should reject these contrived attempts to restrict the availability of network elements to competitive LECs. The record shows that national minimum unbundling requirements are essential to the development of competition on a nationwide basis. The Commission should interpret Section 251(d) in a manner that serves the Congressional goal of ensuring that unbundled network elements are an effective means of entering local telecommunications markets.

In particular, this Commission should affirm that at a minimum, local loops, interoffice transport, signaling, and operator services and directory assistance must be unbundled. These network elements are specifically listed in the section 271 checklist that Bell Operating Companies are required to satisfy to obtain in-region, interLATA entry. As Allegiance and other commenters have indicated, there currently is no wholesale market for these elements, without which Allegiance and other competitive LECs will be materially impaired from providing the services they seek to offer. Thus, national unbundling of these elements is required.

Before the
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REPLY COMMENTS OF ALLEGIANCE TELECOM, INC.

Allegiance Telecom, Inc. (Allegiance) submits these comments in reply to the comments on the Second Further Notice of Proposed Rulemaking issued in this proceeding. The initial comments demonstrate broad support for the Commission to adopt again national minimum unbundling requirements. Further, the comments of Allegiance and other parties show substantial support for requiring incumbent local exchange carriers (LECs) to offer access to loops, interoffice transport, operations support systems, signaling, and operator services and directory assistance. The incumbent LECs, however, seek to use this proceeding to roll back the competition policy adopted by Congress in the 1996 Act and implemented by the Commission in its orders in this docket.

The issue before the Commission in this proceeding is narrow. The Supreme Court directed the agency to "determine on a rational basis *which* network elements must be made available, taking into account the objectives of the Act, and giving some substance to the 'necessary' and 'impair' requirements."[1] The Court did not preclude the agency from adopting a national list of elements that must be provided. Nor did it

[1] *AT&T Corp. v. Iowa Utils. Bd.*, 119 S. Ct. 721, 736 (1999) (*Iowa Utils. Bd.*).

preclude the agency from deciding, on remand, to require the incumbent LECs to provide access to any of the network elements identified in the *Local Competition Order*.[2]

The incumbent LECs, however, seek to use this proceeding to achieve fundamental changes to the Commission's competition policy generally and its approach to the provision of unbundled network elements in particular. To that end, they invoke a variety of rationales to justify denying competitive LECs access to most of the unbundled network elements that the Commission identified in its original order in this docket.

The comments of Allegiance and other parties demonstrate in very specific terms the vital importance that access to unbundled network elements has played and will play in their competitive entry strategies. Granting the incumbent LECs' broad request to limit access to unbundled network elements would effectively halt the progress that competitive LECs have made toward introducing competition in local markets.

I. The Record Shows That the Commission Should Adopt National Rules

Allegiance and other competitive LECs demonstrated in their initial comments that the Commission has the authority and obligation under the 1996 Act to adopt a national list of the network elements that at a minimum must be unbundled by the incumbent LECs.[3] Allegiance, Covad and NorthPoint, for example, described specifically the importance of a national set of requirements to their ability to begin offering their services quickly in markets in different states and regions of the country. The experience of these new entrants shows that the FCC's adoption of a uniform, national set of unbundling requirements over the past three years has reduced significantly the litigation burden on these parties, permitted the development of

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[2] *See* First Report and Order, *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, 11 FCC Rcd 15499 (1996) (*Local Competition Order*).

[3] *See, e.g.*, Allegiance Comments at 2-4; AT&T Comments at 39-46; Covad Comments at 4-6; NorthPoint Comments at 2-3; Nextlink Comments at 3-5; Level3 Comments at 3.

meaningful business plans that depended on the availability of specific network elements from incumbent LECs, and enhanced their ability to attract the capital necessary to finance their entry into local markets. Further, the national unbundling requirements have enabled Allegiance to serve consumers, who otherwise would not have had a choice in carriers. In addition to this concrete evidence of the benefits of national minimum unbundling requirements, the record also shows that on a nationwide basis, there are not effective substitutes, available from competing wholesale providers, for loops, interoffice transport and other network elements that the incumbent LECs were required to unbundle by the *Local Competition Order.*

The incumbent LECs, however, generally contend that the statute bars the Commission from establishing nationwide unbundling requirements for all of the elements identified in the *Local Competition Order.*[4] SBC, for example, claims that identification of a national list of network elements to be unbundled would be inconsistent with the Court's directive that the FCC consider the availability of alternatives outside of the incumbent LECs' network.[5] SBC contends that such determinations under section 251(d)(2) in most cases must be made on a very localized basis, such as end office by end office.

The approach advocated by the incumbent LECs clearly would retard severely the development of local competition. The positions advanced by various incumbent LECs in this proceeding make it plain that in their view, the fact that a single competitive LEC could self-provide a network element is sufficient to repeal the unbundling requirement for that element.[6] Consequently, in the absence of national requirements, competitive

[4] *See, e.g.,* Ameritech Comments at 53-54; BellSouth Comments at 31; GTE Comments at 21.
[5] SBC Comments at 15.
[6] *See, e.g.,* Bell Atlantic Comments at 14; US West Comments at 12.

LECs would be forced to litigate before 50 state commissions access to individual network elements they need to compete in local markets. Such an approach clearly would both impose very substantial costs on competitive LECs as well as delay the delivery of the benefits of competition to consumers. In addition, competitive LECs could offer no assurances to the capital markets that they would be able to obtain access to specific unbundled network elements that they need to provide their services.

Contrary to the assertions of the incumbent LECs, consideration of the availability of network elements outside the incumbent LECs' networks does not preclude the Commission from identifying a minimum list of network elements that must be unbundled on a nationwide basis. The Supreme Court itself implicitly recognized this when it noted that several of the network elements that the Commission originally required to be unbundled might satisfy the requirements of section 251(d)(2).[7]

The incumbent LECs rely heavily on data in a report on the availability of network elements submitted by the United States Telephone Association to support their assertion that the Commission may not adopt minimum national unbundling requirements.[8] As discussed below, however, those data do not show that there are competitive wholesale markets for unbundled network elements throughout the country. In light of the fact that local competition is just beginning to take hold, the Commission clearly should affirm its tentative conclusion that it should adopt national minimum unbundling requirements.

Moreover, even assuming *arguendo*, the Commission were to attach some weight to the incumbent LECs' data, it still may and should adopt national unbundling

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[7] *See Iowa Utils. Bd.* at 736-37. The Court, nevertheless, remanded those elements as well on the grounds that the Commission had not applied a consistent standard.

[8] *See* Comments of United States Telephone Association, UNE Fact Report.

requirements. Section 251(d)(2) by its terms only requires the Commission to "consider" whether denial of access to an element would impair the ability of a requesting carrier to provide service. The statute clearly grants to the Commission, in the exercise of its expert knowledge, the discretion to require unbundling even in central offices where a particular element may be available from competing wholesale providers in order to advance its overall national competition policy. The Commission could reasonably conclude, for example, that the incumbent LECs' approach would impose unreasonable cost burdens on competitive LECs. Further, there is ample evidence on which the Commission could rely to find that such an approach would undermine the efforts of competitive LECs to develop and implement nationwide plans for entry. In short, the Commission has both the legal authority and the record evidence to support a finding that the benefits of identifying a national list of minimum unbundling requirements to the overriding statutory goal of promoting local competition far outweigh the asserted benefits of the incumbent LECs' proposed approach.

II. The Commission Must Interpret and Apply Section 251(d)(2) In a Manner That Serves the Congressional Goal of Ensuring That Unbundled Network Elements Are an Effective Means of Entering Local Telecommunications Markets

The comments of Allegiance and other competitive LECs in this proceeding urge the Commission to define the material terms of section 251(d)(2) in a manner that preserves access to unbundled network elements as an efficient, effective means for such carriers to enter local markets.[9] As we show below, the incumbent LECs erroneously contend that the Commission should interpret this provision in a way that would deny

[9] *See, e.g.,* Allegiance Comments at 7-8; AT&T Comments at 27-38; ALTS Comments at 12; NorthPoint Comments at 6-7.

competitive LECs access to virtually all of the network elements identified in the *Local Competition Order.*

A. Interpretation of the Term "Necessary"

Allegiance contended in its comments that the Commission should interpret the term "necessary" to mean that as a practical matter, the competitive LEC will be unable to offer the service it seeks to provide without access to the network element in question.[10] Other commenting parties proposed similar, practical definitions. ALTS, for example, suggested that access to a proprietary network element is necessary if no non-proprietary substitute is offered by the incumbent LEC or another source and if "failure to provide unbundled access would materially diminish the requesting carrier's ability to offer a competing service offering comparable functionality."[11]

Incumbent LECs propose interpretations of section 251(d)(2)(A) that potentially could greatly expand the scope of its application. Ameritech, for example, suggests that this provision applies to all network elements that contain proprietary information that is used to furnish the element and its functionality, regardless of whether access to the element requires access to the protected information.[12] Moreover, the incumbent LECs contend that the Commission should find that access to such elements is necessary only in instances where the assertedly proprietary aspects cannot be removed prior to providing access to the elements.[13]

In Allegiance's view, these proposals are meritless. This statutory provision should not be applied in cases where access to the network element does not involve access to or disclosure of protected information. The Commission previously concluded

[10] *See* Allegiance Comments at 6.
[11] *See* ALTS Comments at 19; *see also* NorthPoint Comments at 6.
[12] *See* Ameritech Comments at 44.
[13] *See* SBC Comments at 13; Ameritech Comments at 39-40.

that the initial question that must be addressed in applying this provision is whether "the element is proprietary or contains proprietary information that will be revealed if the element is provided on an unbundled basis."[14] Access to an element with proprietary information does not compromise an incumbent LEC's statutory protection if the information is not disclosed.

Moreover, the incumbent LECs' proposed definition finds no support in the statute. Section 251(d)(2)(A) requires the Commission to determine whether "access to elements as are proprietary in nature is necessary," not whether access to assertedly proprietary features and functions is necessary in order for a competitive LEC to use the element. Indeed, the interpretation advanced by the incumbent LECs is reminiscent of their previous attempt to interpret the 1996 Act to permit them to separate already bundled elements for no purpose other than to delay and raise the costs of their potential rivals. In both cases, the purpose and effect of their statutory interpretation is to foreclose competitive LECs from the use of unbundled network elements that they need, and are entitled to, in order to compete with the incumbent LECs' service offerings.

The incumbent LECs attempt to justify this distorted reading of section 251(d)(2)(A) on the ground that it is required to preserve the incentives of the incumbents to invest in proprietary protocols and network functions.[15] That rationale is unpersuasive for several reasons. As MCI pointed out in its comments, most of the innovation and risky investment in new network technology is underwritten by equipment manufacturers, not their customers, the incumbent LECs.[16] Moreover, the network elements at issue in this proceeding do not involve particularly innovative or sophisticated network

[14] *See Local Competition Order* at para. 283.
[15] *See, e.g.*, SBC Comments at 14-15; GTE Comments at 27.
[16] *See* MCI Comments at 9.

technology. Rather, they represent the basic building blocks that new entrants need to offer telecommunications services in the incumbent LECs' markets. In addition, the Commission expressly noted in the *Local Competition Order* that state commissions have the authority to set the rate of return for a particular element at a level that properly takes account of the risk associated with the investment.[17]

B. Interpretation of the Term "Impair"

Allegiance recommended in its initial comments that the Commission interpret section 251(d)(2) to require access to an unbundled network element unless it is demonstrated that an effectively competitive wholesale market for the provision of that element exists.[18] Other parties proposed in their comments substantially similar definitions of that term.[19] All of these various formulations would require an incumbent LEC to provide access to an unbundled network element unless a competitive LEC could obtain access to such an element at competitive rates, terms, and conditions in a wholesale market.

The incumbent LECs propose interpretations of the term "impair" that would restrict substantially access to most of the network elements identified by the Commission in the *Local Competition Order*. Some incumbent LECs, for example, would deny access to network elements if a single competitive LEC is able by itself to provide the element.[20] The effect of this interpretation would be to require all competitive LECs to provide service on a vertically integrated basis. Indeed, Ameritech takes an even more extreme position by claiming that "impair" should be interpreted to mean that a reasonably efficient competitive LEC would be prevented from providing the services it

[17] *See Local Competition Order* at para. 702.
[18] *See* Allegiance Comments at 7-11.
[19] *See, e.g.*, NYPSC Comments at 3-4; ALTS Comments at 25-26; Nextlink Comments at 12-14.
[20] *See* Bell Atlantic Comments at 8; GTE Comments at 22; SBC Comments at 21.

seeks to offer within two years without access to network elements furnished by incumbent LECs.[21] As we show below, the Commission should reject these proposals.

Allegiance and other parties stressed in their initial comments that the Commission should require incumbent LECs to provide access to a particular unbundled network element so long as there is no competitive wholesale market for that element.[22] The fact that a single competitive LEC is able to provide a service by self-provisioning a network element clearly does not establish that a competitive wholesale market exists for that element. More generally, the fact that some competitive LECs choose to offer service by self-provisioning does not mean either that other competitive LECs are required to follow the same entry strategy or that other entry strategies are inefficient.

Further, self-provisioning by a competitive LEC does not show that others could obtain access to the same network element on reasonable terms and conditions, including needed quantities in a timely manner. Similarly, the fact that one competitive LEC is able to obtain access to a network element from a non-incumbent source does not demonstrate that there is an effective wholesale market for that element, capable of delivering the element in the quantities and in the time frame needed by requesting carriers.

One of the key aspects of the 1996 Act is that it enables competitive LECs to develop and pursue very different strategies for entering local markets.[23] The interpretation of "impair" advocated by some incumbent LECs would radically alter this statutory scheme and essentially require new firms to enter either by purchasing and deploying all of its facilities or by reselling the incumbent LECs' services. Congress

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[21] *See* Ameritech Comments at 36.
[22] *See* Allegiance Comments at 8; ALTS Comments at 31 and n.52; NorthPoint Comments at 6-7.
[23] *See Local Competition Order* at para. 12.

clearly intended access to "unbundled network elements" to enable competitive LECs to enter local markets without either having to undertake the enormous cost of duplicating the incumbent LECs' networks or being limited to the resale of the incumbent LECs' existing service offerings. But, that would be the likely effect of adopting the incumbent LECs' interpretation of "impair."

The incumbent LECs' reading of section 251(d)(2) is also inconsistent with the text of that provision. The incumbent LECs would deny access to network elements based on a showing that another competitive LEC was able to provide service by self-providing the element. The statute, however, expressly refers to the impairment of the "ability of the telecommunications carrier seeking access to provide the services it seeks to offer."

Requiring all competitive LECs to self-provide a network element once one has decided to do so as part of its individual business plan amounts to a "one size fits all" approach to local competition. That approach is plainly inconsistent with the local entry plan Congress adopted in the 1996 Act. Further, that approach would not serve the interests of consumers who will reap the benefits of competition provided by new entrants, like Allegiance, that need access to unbundled network elements to offer their services in local markets quickly.

Some incumbent LECs in a related vein suggest that the Commission should ignore the business plans of competitive LECs.[24] What they really mean is that the Commission should only pay attention to competitive LECs that choose to enter by self-providing elements, rather than obtaining them, at least initially, from incumbent LECs. As discussed above, the claim that the Commission should base its determinations under

[24] SBC Comments at 7; Bell Atlantic Comments at 9.

section 251(d)(2) on one particular entry strategy finds no support in the statute and is directly contrary to the goals of Congress and the FCC in giving competitive LECs the tools to follow very different entry strategies.

Several incumbent LECs claim that the Commission should ignore the fact that the competitive check list in section 271, *inter alia*, expressly requires Bell Operating Companies to show that they offer access to unbundled loops, transport, directory assistance and operator call completion services, and databases and associated signaling necessary for call routing and completion.[25] They claim that the showing required under section 271 in order for a BOC to obtain approval to provide in-region interLATA service has no relevance to the Commission's determinations under section 251(d)(2) concerning the network elements that an incumbent LEC must offer.

To the contrary, the unbundling requirements set forth in section 271(c)(2)(B) are very relevant to the Commission's decisions under section 251(c) and (d). The inclusion of a particular network element in the checklist represents very probative evidence that Congress regarded access to that element as essential to the development of local competition. The Commission is obviously still required to determine whether a particular element must be offered on an unbundled basis by all incumbent LECs, BOCs and independents. But, the Commission is clearly entitled to consider the fact that Congress found that access to the elements listed in section 271(c)(2)(B) was sufficiently important to the development of local competition that BOCs would be required to offer them, regardless of whether the FCC imposed such a requirement.

[25] *See, e.g.,* SBC Comments at 9; Bell Atlantic Comments at 18-19.

US West proposes that the Commission essentially should ignore the scale economy advantages that the incumbent LECs enjoy in providing network elements.[26] It suggests that the Court barred the Commission from considering under section 251(d)(2) whether competitive LECs would incur higher costs if they were denied access to incumbent LEC unbundled network elements. What the Court actually said was that a competitive LEC would not be impaired in its ability to compete if denying access to an unbundled network element would reduce its profitability by 1 percent.[27] Nowhere did the Court suggest that an incumbent LEC's scale and scope advantages in local markets are not one of the most formidable barriers confronting new entrants. Further, nothing in that decision is inconsistent with the Commission's finding in the *Local Competition Order* that one of the most important aspects of the 1996 Act is that it required incumbent LECs to share their economies of density, connectivity and scope with new entrants.[28] Clearly, one consequence of the Commission's adoption of the incumbent LECs' interpretation, like their "one size fits all" principle, is that it could be used to justify a broad denial of access to almost all of the network elements that the Commission ordered unbundled in 1996.

SBC seeks to prevent state commissions from ordering access to additional unbundled network elements.[29] SBC asserts that the statute mandates that only the FCC make the determinations required by section 251(d)(2) and that section 251(d)(3) does not empower the states to order additional unbundling.[30]

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[26] *See* US West Comments at 17-18.
[27] *See Iowa Utils. Bd.* at 735.
[28] *See Local Competition Order* at para. 11.
[29] *See* SBC Comments at 19; Ameritech, on the other hand, argues that state commissions do have authority to order additional unbundling. Ameritech Comments at 48-49.
[30] *See* SBC Comments at 19.

Section 251(d)(3) grants states authority to adopt requirements that establish "access and interconnection obligations of local exchange carriers," provided that such requirements are not inconsistent with the FCC's rules and do not substantially interfere with the implementation of the Commission's rules.[31] SBC's assertion that a state commission may not order the unbundling of additional elements absent an FCC finding under section 251(d)(2), in effect, would remove from state commissions the authority that section 251(d)(3) expressly grants.

III. The Network Elements Identified in the Checklist Are Subject To the Unbundling Requirements of Section 251(c)(3)

Allegiance contended in its initial comments that "the Commission should find at a minimum that an incumbent LEC's failure to provide access to any of the unbundled elements of the competitive checklist would impair a requesting carrier's ability to provide service."[32] At the very least, the Commission must create a presumption that the network elements included in the competitive checklist, 47 U.S.C. § 271(c)(2)(B), are subject to the unbundling requirements of section 251(c)(3).

Checklist item (ii) sets forth the general obligation that BOCs must provide nondiscriminatory access to network elements in accordance with the requirements of sections 251(c)(3) and 252(d)(1), while checklist items (iv) through (x) identify the specific network elements, including loops, transport, operator and directory assistance services, and databases and associated signaling necessary for call routing and completion, that BOCs must provide in order to meet the burden of proving that they have opened their local exchange markets to competition. By specifically identifying the individual elements to which the BOCs must provide unbundled access to demonstrate

[31] *See* 47 U.S.C. § 251(d)(3).
[32] Allegiance Comments at 8.

that their local markets are sufficiently open to competition to warrant long distance entry, Congress plainly determined that competition was unlikely to develop—i.e., that a requesting carrier's ability to compete would be impaired—without access to these elements. For this reason, as well as those stated in the *Local Competition Order,* the Commission should confirm its earlier determination that the UNEs included on the checklist meet the necessary and impair standards of 251(d)(2).

Although the incumbent LECs do not dispute that the unbundled elements set forth in the checklist must be made available by the BOCs in order to obtain interLATA relief, they contend incongruously that the Commission effectively should ignore the checklist in making its determinations under section 251(c)(3) and (d)(2).[33] Contrary to these claims, the identification of specific unbundled network elements in the competitive checklist is clearly relevant to the Commission's deliberations. In adopting section 271, the Conference Committee explained that:

> The competitive checklist is not intended to be a limitation on the interconnection requirements contained in section 251, but rather, at a minimum, be provided by a BOC in any interconnection agreement approved under section 251 to which that company is a party (assuming the other party or parties to that agreement have requested the items included in the checklist) before the Commission may authorize the BOC to provide in region interLATA services.

Telecommunications Act of 1996, Joint Explanatory Statement of the Committee of Conference, Conf. Rept. 104-230, 104th Cong., 2d Sess (1996) at 144.

This statement clearly reflects Congress' intent and expectation that the checklist

[33] *See, e.g.,* SBC Comments at 9-10; BellSouth Comments at 48, n. 47; Ameritech Comments at 50-53; Bell Atlantic Comments at 18-19.

items would be provided by the BOCs pursuant to their obligations under section 251. Any other interpretation would substantially and unnecessarily undermine the effectiveness of the checklist as a market opening tool. Indeed, the quoted passage from the Conference Committee Joint Explanatory Statement shows that Congress intended that the network elements listed in section 271 would be provided by the BOCs in accordance with the requirements of section 251(c)(3). Those requirements, such as non-discrimination and just and reasonable rates, ensure that competitive LECs will have access to network elements in a manner that will enable them to be effective competitors.

Because Congress has already determined that a requesting carrier's ability to compete will be impaired without access, at a minimum, to the network elements included on the checklist, the Commission must also conclude that such elements meet the standards of Section 251(d) and are subject to the requirements of Section 251(c)(3) when provided by non-BOC incumbent LECs.

IV. In The Absence of A Competitive Wholesale Market For A Particular Element, The Incumbent LECs Should Not Be Relieved Of Their Unbundling Obligations

Congress required incumbent LECs to unbundle their networks for the sole purpose of facilitating competitive entry. Most, if not all, of the facilities-based competitors that have entered the local exchange market have been able to provide full service to their end users only because they have been able to supplement their own facilities with the incumbent LEC network elements the Commission originally identified in Rule 319. This method of entry is precisely what Congress contemplated in adopting the unbundling requirements:

> This conference agreement recognizes that it is unlikely that competitors will have a fully redundant network in place when they initially offer local service, because the investment necessary is so significant. Some facilities and capabilities . . . will likely

need to be obtained from the incumbent local exchange carrier as network elements pursuant to new section 251.

Telecommunications Act of 1996, Joint Explanatory Statement of the Committee of Conference, Conf. Rept. 104-230, 104th Cong., 2d Sess. (1996) at 148.

All of the incumbent LECs appear to concede that failure to provide access to their OSS would impair a competitor's ability to provide service.[34] In contrast, they contend that they should be relieved of the obligation to provide access to the remaining UNEs included in the Commission's original Section 319 list either immediately or upon the occurrence of various triggering events.

As noted above, Congress made clear in section 271 that it regarded the elements listed in that provision as minimum unbundling requirements for opening local markets. That section and the legislative history also make clear Congress' intent that the BOCs would be required to offer access to those elements in the interconnection agreements that they executed pursuant to sections 251 and 252. The BOCs' suggestion that they be relieved of these obligations on a broad basis at this early stage in development of local competition flies in the face of Congress' clearly expressed intent.

Moreover, Allegiance submits that at the present time, there is insufficient evidence of a competitive wholesale market for loops, transport, signaling or operator and directory assistance services that would justify immediately relieving the incumbent LECs of the obligation to provide access to these network elements on an unbundled basis. Allegiance urges the Commission to reject the triggers proposed by the incumbent

[34] *See, e.g.,* SBC Comments at 56; US West Comments at 41.

LECs as unworkable and too broadly drawn to serve as reliable prognosticators of the existence of adequate non-incumbent LEC sources for these elements.[35]

SBC proposes that if *any* competitor currently provides service without access to a particular incumbent LEC element, that is conclusive evidence that an efficient competitor can compete without access to the element in question.[36] As discussed above, application of such a standard would clearly impede the development of competition. Although the incumbent LECs uniformly complain—without basis—that competitors have no incentive to invest in their own facilities as long as they have access to unbundled elements, application of SBC's test would turn this complaint into a self-fulfilling prophecy.

For example, assume that a competitive LEC's market entry strategy is to offer service using a combination of its own network facilities and unbundled loops leased from the incumbent LEC while it tests the market and weighs the economics of duplicating the incumbent LEC's ubiquitous loop network. To the extent the competitive LEC is successful in building a customer base, it might consider first installing its own loops in the areas where its customer base is densest, but continue to rely on the incumbent LEC's loops to serve customers in outlying areas until the economics justify expansion.

Under SBC's test, the competitive LEC (and all other competitive LECs in the market) would lose the ability to access any unbundled loops as soon as it self-provisioned a single loop to serve a single customer. Because of the potential for losing

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[35] Allegiance supports the New York State Public Service Commission's argument that the Commission must determine whether commercially viable substitutes for the ILEC unbundled elements are sufficiently available -- i.e., "promptly accessible in the market at a price that would allow the new entrant to participate in a competitive manner." (NYPSC Comments at 3-4.)

[36] SBC Comments at 21.

access to the unbundled elements that it needs to serve customers not yet reached by its own network, the competitive LEC is very likely to be deterred from investing in its own physical facilities to gradually build a network and eliminate its dependence on the incumbent LEC. The incumbent LECs' networks were not built in a day and neither will the competitive LECs' networks be, as Congress recognized in imposing the unbundling requirements on the incumbent LECs.

The incumbent LECs also propose that they be relieved of the obligation to provide access to certain network elements, including transport and loops, in dense wire centers (40,000 or more lines) that have at least one collocated competitive LEC.[37] The incumbent LECs urge the Commission to infer that there are alternative sources of transport and loops available in all dense wire centers where competitive LECs have chosen to collocate, and that a competitive LEC's ability to compete would not be impaired if it were denied access to unbundled transport and loops in those wire centers.

Such an inference is unwarranted. The mere presence of a collocator in an incumbent LEC wire center or the size of a wire center, standing alone, does not demonstrate that there is a competitive wholesale market for transport or loops in that wire center for a number of reasons.

First, the competitive LEC may have collocated in the wire center for the very purpose of obtaining access to the incumbent LEC's unbundled transport, loops or other network elements. Rather than demonstrating the existence of a wholesale market, the competitive LEC's presence in the wire center is just as likely to reflect the lack of alternative non-incumbent LEC sources for the elements.

[37] *See, e.g.*, SBC Comments at 23, 50.

Second, the fact that the collocated competitive LEC is self-provisioning transport, loops or other elements would not demonstrate that other competitive LECs have access to the elements from an alternative non-incumbent LEC source. The self-provisioning competitive LEC would have no obligation, and indeed may decline, to make its network facilities available to other competitive LECs. Thus, while there may be one competitive LEC operating in the wire center who is not dependent on the incumbent LEC's loops or transport, other competitive LECs may have no other alternative.

Finally, even if the collocated competitive LEC did offer its transport or loops to other competitive LECs on a wholesale basis, the test fails to take into account whether the transport or loops provide the connections to the central offices or end users that a particular competitive LEC wants to serve. The advantages conferred by the ubiquity of the incumbent LECs' networks cannot be downplayed in this context.

For similar reasons, the Commission must reject the suggestion that a fully viable alternative to the local loop will exist once the incumbent cable operator begins offering telephony on TCP/IP protocols.[38] While the cable operator may provide an alternative source of dial tone for end users, Section 251(d)(2) requires the Commission to consider whether competitive carriers have alternative sources for network elements.

Contrary to the incumbent LECs' assertions, a fully viable alternative to the local loop will not exist for any competitive LEC except the cable operator, which is not required to unbundle its network or make its loops available to other carriers. If the Commission were to relieve the incumbent LECs of the obligation to provide unbundled loops in these circumstances, it will limit an end user's choice of competitive local

[38] *See, e.g.,* SBC Comments at 28.

exchange carriers to the incumbent LEC and the incumbent cable operator and shut smaller carriers out of the market.

The progress made thus far by Allegiance and other competitive carriers is in large part attributable to their ability to make use of the unbundled network elements included in the Commission's original list to expand the reach of their nascent networks. The Commission should not impede that progress by prematurely removing any elements from the original list. In the absence of evidence of a truly competitive wholesale market, the Commission should reaffirm its previous determination that each of the network elements included on the original list continues to meet the standards of Section 251(d)(2).

V. Conclusion

For the forgoing reasons, the Commission should adopt the recommendation set forth above and in Allegiance's initial comments.

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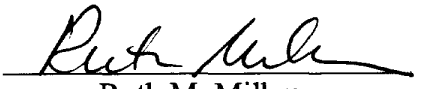
June 10, 1999

CERTIFICATE OF SERVICE

I, Ruth M. Milkman, do hereby certify that on this 10th day of June, 1999, I caused a copy of the foregoing Reply Comments of Allegiance Telecom, Inc. to be served upon each of the parties listed on the attached Service List.



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